

COMMITTEE CONFERENCE and EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
of the Walnut Energy Center)	02-AFC-4
by Turlock Irrigation District)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, FEBRUARY 10, 2004
10:20 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James Boyd, Presiding Member

HEARING OFFICER, ADVISERS PRESENT

Stanley Valkosky, Hearing Officer

Michael Smith, AdvisER

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Legal Counsel

Bob Eller, Project Manager

Lance Shaw, Compliance Project Manager

PUBLIC ADVISER

J. Mike Monasmith

APPLICANT

Jeffery D. Harris, Attorney
Greggory Wheatland, Attorney
Ellison, Schneider and Harris, LLP

Randy C. Baysinger, Project Manager, Assistant
General Manager
Turlock Irrigation District

Susan Strachan, Principal
Strachan Consulting

Gary S. Rubenstein
Sierra Research

John L. Carrier
CH2M HILL

Jim McLucas
Calpine

ALSO PRESENT

Jim Swaney
San Joaquin Valley Air Pollution Control District

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Background and Overview	3
Hearing Officer Valkosky	3
Supplemental Testimony	4
Visual Resources	4
Applicant - by Declaration	4
Exhibit 59	5/6
CEC Staff - by Declaration	7
Exhibit 60	6/7
PMPD Comments	8
Substantive and/or Editorial	9
Applicant	11
CEC Staff	9
Substantive	15
Compliance	15, 38
Applicant	15
CEC Staff	16
Air Quality	26
CEC Staff	26, 33
Applicant	27
San Joaquin Valley Air Pollution Control District	31

I N D E X

	Page
PMPD Comments - continued	
Substantive - continued	
Land Use	33
CEC Staff	34
Applicant	34
Schedule	37
Com-8 Language	38
Closing Remarks	41
Adjournment	42
Reporter's Certificate	43

P R O C E E D I N G S

10:20 a.m.

PRESIDING MEMBER BOYD: Good morning, everybody. Sorry for the delay. Having a little trouble getting organized and finishing some other things. The danger of coming to Sacramento is the Committee gets caught by other crises of the moment. Pardon the delay. Actually it's not foggy all the way to Turlock, so it's probably kind of nice. My step-mother lives in Turlock; I should look for excuses to go down there.

Okay, anyway, shall we officially open this meeting and welcome everybody. This is the Committee conference on the PMPD, as well as the fourth evidentiary hearing for the Walnut Energy Center. And as is tradition, before we begin we'd like to introduce the Committee and ask the parties to identify themselves for the record.

I'm Commissioner Jim Boyd, Chair of the Committee. With me is my Adviser, Mike Smith. To my right our Hearing Officer who's going to take control of this in just a moment, Stan Valkosky.

And I would ask now that the applicant introduce your folks.

MR. HARRIS: This is Jeff Harris; I'm

1 here on behalf of the applicant. To my right is
2 Mr. Baysinger. I'd ask him to introduce the rest
3 of our team.

4 MR. BAYSINGER: Good morning,
5 Commissioner. To my right is Susan Strachan
6 Permitting Project Manager. We have Jim McLucas,
7 engineer. John Carrier, my Environmental Project
8 Manager. Gregg Wheatland, Assistant Counsel. And
9 Gary Rubenstein, Air Quality Specialist.

10 PRESIDING MEMBER BOYD: Thank you.
11 Staff.

12 MS. HOLMES: Thank you. Good morning.
13 My name is Caryn Holmes; I'm the Staff Counsel
14 assigned to this project. To my right is Bob
15 Eller, the Project Manager. To my left are two of
16 our Air Quality Staff, and I believe in the
17 audience is Mr. Shaw, who will be the Compliance
18 Project Manager for this project.

19 PRESIDING MEMBER BOYD: Mr. Shaw,
20 everyone recognize you.

21 All right, our Public Adviser is
22 standing in the doorway over there. Would you
23 like to say your name for the record?

24 MR. MONASMITH: Mike Monasmith,
25 Associate Public Adviser.

1 PRESIDING MEMBER BOYD: Thank you, Mike.
2 Anyone else who wants to be introduced for the
3 record?

4 Okay, with that, Mr. Valkosky -- oh,
5 there is a gentleman here. I'm so used to no one
6 standing here, I'm sorry.

7 MR. SWANEY: I'm Jim Swaney with the San
8 Joaquin Valley Air District.

9 PRESIDING MEMBER BOYD: Oh, hi, Jim.
10 It's been awhile. Sorry about that.

11 Okay, Mr. Valkosky, would you like to
12 provide background and move us through the day
13 now.

14 HEARING OFFICER VALKOSKY: Thank you,
15 Commissioner Boyd. By way of background, the
16 Committee issued its Presiding Member's Proposed
17 Decision and scheduled today's conference on
18 January 14th of this year, as provided in that
19 notice. Applicant petitioned to reopen the
20 evidentiary record on January 30th. The Committee
21 granted that request and specified that we would
22 receive supplemental evidence at today's event.

23 Documents relevant to today's
24 proceedings are the PMPD, applicant's supplemental
25 prepared testimony for visual resources, which is

1 identified as exhibit 59; staff's supplemental
2 testimony regarding visual resources which is
3 identified as exhibit 60; applicant's PMPD
4 comments and staff's PMPD comments.

5 The way I propose to proceed is we'll
6 take the supplemental testimony first following
7 our customary procedures for introducing evidence.
8 Following that, we'll proceed with applicant, and
9 then staff's comments on the PMPD. Is there any
10 question?

11 Seeing none I'll initiate the
12 evidentiary presentation on the topic of visual
13 resources. Mr. Harris.

14 MR. HARRIS: Good morning, Mr. Valkosky.
15 It's my understanding that we're going to go ahead
16 and take the evidence by declaration, and so,
17 first off, is that correct?

18 HEARING OFFICER VALKOSKY: Does anyone
19 here have any questions on the testimony?

20 MS. HOLMES: Staff has no questions.

21 HEARING OFFICER VALKOSKY: Anyone else?
22 Then in that case that is correct.

23 MR. HARRIS: Thank you, sir. The
24 evidence that we're moving, adding to the record
25 today is related to visual resources. Our

1 witnesses are Mr. Baysinger, Mr. McLucas and Mr.
2 Rubenstein. Their testimony was prefiled pursuant
3 to the Committee order, and that information is
4 available. Their declarations are attached to
5 their testimony; and I'm sorry, I didn't get the
6 exhibit number for their testimony, Mr. Valkosky.

7 HEARING OFFICER VALKOSKY: Exhibit 59.

8 MR. HARRIS: Attached to exhibit 59.
9 And I would move that testimony in by declaration.

10 HEARING OFFICER VALKOSKY: Mr. Harris,
11 am I correct in assuming that condition visual
12 resources 6, as you have proposed, comports
13 precisely with that proposed by staff?

14 MR. HARRIS: It's perfect, yes, sir.

15 HEARING OFFICER VALKOSKY: Okay.

16 MR. HARRIS: If I could just briefly,
17 take an opportunity to explain. The project is
18 moving forward, and this is a good news project, I
19 think, for the State of California. We have an
20 applicant here who's ready, willing and kind of
21 more than able to move forward with the
22 construction of the project.

23 And so one of the themes that you're
24 going to see today are minor changes, mostly to
25 verification language, that's intended to allow

1 this project to move forward as expeditiously as
2 possible.

3 And so we want to first off, thank the
4 staff for their review of the materials we
5 submitted, for their quick review. I also want to
6 inform the Committee that we've been really filing
7 a lot of documents that we're going to need to
8 file to enable us to move forward with the
9 construction as fast as possible, even before
10 certification. And, again, staff has been
11 outstanding in reviewing those documents and
12 communicating with Ms. Strachan, who is our
13 compliance manager, to allow us to move forward.

14 So we just want to thank the staff for
15 both their review of this information and for the
16 plans we've been submitting, anticipating a quick
17 construction.

18 So, with that I'll thank the Committee
19 and shut up.

20 HEARING OFFICER VALKOSKY: Okay, the
21 motion is to move exhibit 59 into evidence. Is
22 there objection?

23 MS. HOLMES: No objection.

24 HEARING OFFICER VALKOSKY: No objection.

25 Exhibit 59, applicant's supplemental visual

1 resources testimony, is admitted.

2 Anything else, Mr. Harris?

3 MR. HARRIS: No, sir.

4 HEARING OFFICER VALKOSKY: Staff.

5 MS. HOLMES: Thank you. Staff prefiled,
6 pursuant to the Committee's order, supplemental
7 testimony on cooling tower plumes that's been
8 identified as exhibit 60. Exhibit 60 did not
9 contain a declaration and r, sum,. I was under the
10 mistaken impression that there could be questions
11 for Mr. Knight.

12 I confirmed with the parties and the
13 Committee that there would be no questions of Mr.
14 Knight, and have brought to the hearing today his
15 declaration and r, sum,. I provided a copy to the
16 Committee and I've provided a copy to the
17 applicant.

18 So, with that, I guess I would like to
19 move that exhibit 60 be entered into the record.

20 HEARING OFFICER VALKOSKY: Any
21 objection?

22 MR. HARRIS: No objection.

23 HEARING OFFICER VALKOSKY: Objection
24 from anyone? Being no objection, exhibit 60 is
25 received into evidence. Exhibit 60 is staff's

1 supplemental testimony and declaration on visual
2 resources.

3 Anything else on visual resources?
4 Anything else of an evidentiary nature?

5 If there is nothing else we'll re-close
6 the evidentiary record.

7 MR. HARRIS: Thank you.

8 HEARING OFFICER VALKOSKY: All right.

9 PRESIDING MEMBER BOYD: I'd like to
10 comment the staff and the applicant for resolving
11 this issue and the good work they've done.

12 Now, moving on.

13 (Laughter.)

14 HEARING OFFICER VALKOSKY: Okay, now
15 we'll get to the comments on the PMPD. Reviewing
16 them, I think there's basically three categories
17 of comments. There's the ones that are purely
18 editorial, the misspellings and things like that.

19 There are the substantive ones which
20 from applicant deals with compliance, and from
21 staff deals with air quality and land use.

22 And then there is another category which
23 I guess could possibly be considered substantive
24 comments.

25 What I would like to do is take that

1 category first. I have four comments which I've
2 identified as potentially substantive, three
3 changes suggested by applicant and one change
4 suggested by staff. I'd like to work through
5 these and see if they are, in fact, substantive or
6 editorial. And then proceed. Is there any
7 question? Okay.

8 Applicant proposes at page 4 of its
9 comments a change to the verification of condition
10 TSE-1, which appears on page 79 of the PMPD. Does
11 staff have any problem with that change?

12 MS. HOLMES: No, staff agrees with that
13 change.

14 HEARING OFFICER VALKOSKY: Okay. It's
15 getting easy. On the same page applicant proposes
16 a change to the verification in condition air
17 quality-2, which appears on page 109 of the PMPD.
18 Does staff have any problem with that?

19 MS. HOLMES: No, we do not.

20 HEARING OFFICER VALKOSKY: And how about
21 the verification of condition Haz-6 appearing at
22 page 144 of the PMPD?

23 MS. HOLMES: That one is also
24 acceptable.

25 HEARING OFFICER VALKOSKY: Okay. Does

1 staff have any problems with the balance of
2 applicant's comments, excluding those dealing with
3 compliance?

4 MS. HOLMES: If you could give us just a
5 moment. We had a discussion off the record prior
6 to the beginning of the hearing with Mr.
7 Rubenstein about their comments on air quality;
8 the air quality staff is still reviewing what they
9 said. Hopefully it will only take one more
10 minute.

11 HEARING OFFICER VALKOSKY: Okay.

12 (Pause.)

13 (Laughter.)

14 MS. HOLMES: We don't think there's a
15 major issue but there is a little bit of a
16 disconnect here. Staff had provided a comment on
17 air quality which the applicant has responded to
18 verbally, but they didn't raise anything in their
19 prefiled comments on this issue.

20 So, we could try to work through it now
21 or we could wait till we get to the applicant's
22 comments on staff's comments that we submitted
23 formally.

24 HEARING OFFICER VALKOSKY: Okay, was
25 that dealing with the verification on AQ-78?

1 MS. HOLMES: No.

2 HEARING OFFICER VALKOSKY: No?

3 MS. HOLMES: It was dealing with the
4 suggestion that staff had provided for page 100 of
5 the PMPD; the suggestion as indicated at the
6 bottom of appendix A to staff's filing.

7 So we can deal with it when we get to
8 the applicant's comments on staff's filing.
9 Doesn't make any difference to us.

10 HEARING OFFICER VALKOSKY: Okay, well,
11 with that exception does staff have any problem
12 with the other comments from applicant on the
13 PMPD?

14 MS. HOLMES: No, not aside from the
15 discussion we're going to have on compliance.

16 HEARING OFFICER VALKOSKY: Right. Okay,
17 thank you.

18 Mr. Harris, staff has proposed a change
19 which could be considered substantive to the
20 verification in AQ-78, page 125 of the PMPD. That
21 appeared in their appendix A.

22 MR. HARRIS: Yes. And I'm informed that
23 that proposed change is acceptable.

24 HEARING OFFICER VALKOSKY: Okay.

25 Looking at appendix A of staff's comments, does

1 applicant have any problems with incorporating the
2 rest of them?

3 MR. HARRIS: Excepting out the air
4 quality issue that we're going to discuss in a
5 moment, and land --

6 HEARING OFFICER VALKOSKY: Yeah, the
7 land use is not appendix A. Land and --

8 MR. HARRIS: Right. Let me just confirm
9 with our folks.

10 (Pause.)

11 MS. HOLMES: Right. We had -- I had
12 gremlins in my computer when this was written, and
13 unfortunately, several things were inadvertently
14 deleted from our appendix A.

15 On page 2 of appendix A under geology
16 and paleontology the word or the phrase, page 195,
17 at the beginning, disappeared. And on the same
18 page, up above under waste management where
19 there's a discussion of the amount of waste that
20 would be created by the project, we attempted to
21 add the word annually. And, again, it disappeared
22 when we printed out the comments.

23 MR. HARRIS: So, Caryn, just for
24 clarification, where would the word annually go in
25 that sentence?

1 MS. HOLMES: I believe it would best go
2 at the end of the sentence.

3 MR. HARRIS: Okay, I think so, too.
4 Thank you.

5 HEARING OFFICER VALKOSKY: That's the
6 sentence that quantifies the --

7 MS. HOLMES: Correct.

8 HEARING OFFICER VALKOSKY: Okay.

9 MS. HOLMES: We just wanted to make it
10 clear that it was an annual quantification, and I
11 apologize for the computer problems.

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. HARRIS: After the word mud.

14 (Laughter.)

15 HEARING OFFICER VALKOSKY: Okay, with
16 that clarification, Mr. Harris, are there any
17 problems?

18 MR. HARRIS: As to appendix A, I think
19 with those two clarifications that there are no
20 problems.

21 HEARING OFFICER VALKOSKY: Okay. What
22 you can anticipate is that all of the changes
23 we've just discussed as being editorial, will be
24 incorporated into the errata for the final
25 decision. So unless there is some compelling

1 reason I don't really see any need to go over them
2 any further.

3 MR. HARRIS: Mr. Valkosky, just --

4 HEARING OFFICER VALKOSKY: Yeah.

5 MR. HARRIS: -- for clarification, on
6 page 1 of the staff's appendix A, at the very
7 bottom it says page 101 footnote 12. That, I
8 guess, is one of the issues we'll be discussing
9 here in a moment, so I should have flagged that.

10 HEARING OFFICER VALKOSKY: Right, that's
11 the one that --

12 MR. HARRIS: Yeah, okay.

13 HEARING OFFICER VALKOSKY: -- staff said
14 they wanted to discuss. No, they said with the
15 exclusion of that.

16 MR. HARRIS: Okay.

17 HEARING OFFICER VALKOSKY: And, of
18 course, the land use and the broader air quality
19 topic. Unless there is objection you can assume
20 that all those comments will be treated as
21 editorial in nature and included in the errata.
22 Do either of the parties have a problem with that?
23 Mr. Harris?

24 MR. HARRIS: I think we're fine. I
25 apologize for muddying the record and having to

1 clarify it, but, yes, we're okay.

2 HEARING OFFICER VALKOSKY: That's okay.

3 Ms. Holmes?

4 MS. HOLMES: I'm sorry, I missed that.

5 HEARING OFFICER VALKOSKY: Basically I'm
6 going to take all of applicant's comments, with
7 the exception of compliance and that one air
8 quality issue, as editorial and incorporate, is
9 that okay?

10 MS. HOLMES: That is okay.

11 HEARING OFFICER VALKOSKY: All right,
12 fine.

13 All right, moving -- well, let's do
14 compliance first. Applicant had really limited
15 its, what I would consider substantive, comments
16 to the area of compliance. I've passed out a
17 proposed revision to condition Com-8, which
18 attempts to incorporate what the Committee sees as
19 persuasive concerns on behalf of applicant.

20 Have you had a chance to review that,
21 Mr. Harris?

22 MR. HARRIS: I'd like Mr. Baysinger to
23 have just a moment with the language.

24 HEARING OFFICER VALKOSKY: We can take a
25 five-minute recess if that would help.

1 MR. HARRIS: Yeah, I think maybe that
2 would be helpful.

3 HEARING OFFICER VALKOSKY: All right,
4 we'll reconvene at a quarter to the hour.

5 (Brief recess.)

6 HEARING OFFICER VALKOSKY: Okay, back on
7 the record. Okay, while we were off the record
8 the parties were discussing a proposed redraft of
9 a portion of Com-8. Mr. Harris, does the
10 applicant have any comments?

11 MR. HARRIS: Yes, the one word change
12 that we'd suggested about the middle of the page
13 under security plans, second paragraph, --
14 construction security plans, thank you -- under
15 the second paragraph the second line where the
16 words site specific, we would strike that and
17 replace it with the construction, just for
18 consistency with the heading.

19 Other than that this language is
20 acceptable to the applicant. There are other
21 issues in Com-8 we need to discuss, but as to this
22 issue --

23 HEARING OFFICER VALKOSKY: Right, no,
24 I'm just talking about this. Staff?

25 MS. HOLMES: The change proposed by Mr.

1 Harris is acceptable. The proposed changes that
2 the Committee has just distributed raise a couple
3 of issues that I want to just walk through fairly
4 quickly.

5 First of all, there's the issue of the
6 point in time in which the construction security
7 plan -- well, I guess in the proposed changes you
8 don't even have the construction security plan
9 being onsite. It would be at the District
10 Offices, which I think is what the applicant had
11 requested.

12 Staff would prefer that once there is a
13 secure facility for keeping the security plan
14 during the construction process that it be moved
15 onsite.

16 HEARING OFFICER VALKOSKY: We have, if
17 you look to the first paragraph that's added, the
18 last sentence, after completion of construction
19 the document shall be maintained onsite.

20 MS. HOLMES: That's the -- right.

21 HEARING OFFICER VALKOSKY: Right.

22 MS. HOLMES: And staff's point is that
23 during the construction process we would like to
24 see the construction security plan be maintained
25 on the construction site for access once there is

1 a secure place to keep it.

2 In their comments the applicant raised a
3 concern that keeping a security plan onsite when
4 there is no locked facility or fencing around the
5 perimeter would be inappropriate. And staff
6 agrees with that.

7 So our preference is to have the
8 construction security plan can be at the District
9 Offices prior to there being a secure location on
10 the construction site. But once there's a secure
11 location on the construction site we think it's
12 more appropriate that it be maintained there where
13 it could be used.

14 HEARING OFFICER VALKOSKY: Mr. Harris,
15 does applicant have any comment on that?

16 MR. HARRIS: In principle I think that
17 makes sense. The question that I have is, you
18 know, is a trailer a secure site. I guess I see a
19 functional, you know, just a real practical
20 question about what point during the construction
21 is Randy's building strong enough to hold this
22 plan.

23 I've just been envisioning a scenario
24 where Randy has to call me up -- sorry, Mr.
25 Baysinger has to call me up and say, okay, do I

1 move it today. I've got this, this and this done,
2 but not this. So, --

3 HEARING OFFICER VALKOSKY: Ms. Holmes,
4 what's the problem with having it maintained at
5 the secretary's office until construction is
6 complete?

7 MS. HOLMES: Well, because it is a plan
8 for the construction phase of the process, staff
9 believes that it ought to be onsite so that it can
10 be consulted should there be a need to use it.

11 HEARING OFFICER VALKOSKY: Why couldn't
12 it be consulted at the secretary's office? I
13 mean, you know, maybe there's a little travel
14 between the site and the secretary's office --

15 MS. HOLMES: I think that is the
16 concern, that staff would like people who are
17 responsible for the construction, in the event
18 that there's something going on during the
19 construction process that necessitates reference
20 to the plan or use of the plan, they want it to be
21 immediately available.

22 I have another suggestion which I have
23 not made to the applicant yet, but I notice that
24 the Walnut Peaking Power Plant is in much closer
25 proximity to the Walnut Energy Center than the

1 District Offices. And if there is a secure
2 location there that might be an acceptable
3 alternative.

4 MR. BAYSINGER: It's an unmanned site,
5 but it is secure.

6 MS. HOLMES: Does it have perimeter
7 fencing and --

8 MR. BAYSINGER: Oh, yeah.

9 MS. HOLMES: So that's a possible
10 alternative to keep it at the Walnut Energy
11 Facility, which is closer and is secure.

12 MR. HARRIS: There's no office buildings
13 there. Are we going to put up a fireproof --

14 MR. BAYSINGER: No, there's an office
15 building there.

16 MR. HARRIS: Is there an office building
17 there? Oh, there is a facility there?

18 MR. BAYSINGER: Um-hum.

19 HEARING OFFICER VALKOSKY: So basically
20 what you're suggesting is the insertion of a
21 sentence, something to the effect that during
22 construction the construction security plan shall
23 be maintained at a secure location at the Walnut
24 Peaking Plant?

25 MS. HOLMES: Right, would be prior to

1 the completion of construction. I think you could
2 substitute that location for the phrase Turlock
3 Irrigation District Board of Director's
4 Secretary's Office in your proposed language.

5 HEARING OFFICER VALKOSKY: Okay, so
6 prior to completion of construction the
7 construction security plan shall be maintained at
8 the --

9 MR. HARRIS: Mr. Valkosky, --

10 HEARING OFFICER VALKOSKY: Yeah.

11 MR. HARRIS: I guess I'm a little
12 concerned about mixing regulated sites and
13 unregulated sites and --

14 HEARING OFFICER VALKOSKY: Look, frankly
15 I think we're getting to a --

16 MR. HARRIS: Yes.

17 HEARING OFFICER VALKOSKY: -- a really
18 ridiculous level on this, myself. But, you know,
19 so we don't have to listen to this at the business
20 meeting, I'd really like to get it worked out now.

21 (Laughter.)

22 HEARING OFFICER VALKOSKY: Okay? So I'm
23 open to something reasonable.

24 MS. HOLMES: I beg your pardon?

25 HEARING OFFICER VALKOSKY: I'm open to

1 something reasonable.

2 MR. HARRIS: How about a sentence that
3 says we'll move it to the construction site as
4 soon as it's approved and as soon as it's
5 practicable? That's about as clear as anything
6 else.

7 Really, there's not going to be a
8 problem. These sites are four miles apart. I
9 understand the desire to have it nearby. And I
10 just don't want to have to answer the question of,
11 you know, is it soup yet in terms of security over
12 there.

13 HEARING OFFICER VALKOSKY: Staff, what's
14 the --

15 PRESIDING MEMBER BOYD: Is it possible
16 to have some language along the lines of it can be
17 transferred when it's mutually agreed that there's
18 a secure -- it's secure on the construction site?
19 Do you think you people could ever mutually agree
20 on that fact?

21 MS. HOLMES: I think we've mutually
22 agreed on a lot in this case, compared to some
23 others I've worked on. I'm actually fairly
24 confident that if we were to -- that we could come
25 up with language by the business meeting. I

1 really don't think we need to spend any more time
2 on this.

3 HEARING OFFICER VALKOSKY: Okay, so
4 basically what you're saying is the Committee
5 should leave this language there expecting agreed-
6 upon language at the time of the business meeting?
7 Is that a correct understanding?

8 MS. HOLMES: Yes.

9 HEARING OFFICER VALKOSKY: Mr. Harris,
10 is that correct?

11 MR. HARRIS: Sure.

12 HEARING OFFICER VALKOSKY: Well, all
13 right. Next, did you have more concerns?

14 MS. HOLMES: Yeah, staff had one other
15 issue and it has to do with whether the plan gets
16 submitted to the Energy Commission or stays
17 onsite. Let me just give you a brief history and
18 I will try to keep it brief.

19 In the FSA, as it originally came out,
20 exhibit 11, staff had suggested that the
21 construction plan be maintained -- the
22 construction security plan be maintained onsite
23 and examined onsite by staff for adequacy. We had
24 suggested that the operational plan also be
25 onsite.

1 When we submitted our revisions in
2 exhibit 47 we were silent on whether the operation
3 plan should come here or stay there. The PMPD has
4 the operation plan, security plan coming here.
5 And the applicant has objected to that.

6 Let me just give you staff's basic
7 preference, and that is that the security plans do
8 get submitted to the Energy Commission here.
9 However, since we did sponsor testimony that said
10 that them remaining onsite is acceptable, we won't
11 object if the Committee chooses to do that. We
12 just wanted to let you know that our preference is
13 to have the plans submitted here.

14 We were trying to compromise on this
15 language earlier on in the proceeding and strayed
16 from our preference as a result of having
17 sponsored testimony that would allow the plans to
18 remain onsite. As I said, we won't object.

19 HEARING OFFICER VALKOSKY: Okay, thank
20 you. Is there anything else on the compliance
21 area?

22 MR. HARRIS: Yes, on the same condition,
23 com-8, let me just note on thing in that there is
24 some specific language at the end we want to talk
25 about, as well. I think the discussion we're just

1 having does point out what I'll describe as an
2 evolving staff position on the issues of security.

3 I would have to go back and grab the
4 documents, you know, which of my cases have plans
5 going here or there. I don't think I have, among
6 three clients, a com-8 condition that's the same
7 for any of them, let alone the same within the
8 same project.

9 I again think that this ad hoc approach
10 is going to cause problems down the road. And I
11 would ask that the Committee consider again a
12 broader approach to these issues, because I think
13 they cut across all projects licensed and those in
14 the licensing process.

15 Having said that, though, there is one
16 additional piece of language that the Committee
17 added. I'm now on page 3 of the applicant's
18 comments on the PMPD. The final paragraph in
19 compliance, there's some italicized language that
20 the Committee added in the PMPD, and the language
21 read: "protocol for contacting law enforcement and
22 the CPM in the event of emergency or conduct
23 endangering the facility, its employees or
24 contractors." And then the new language is in
25 italics: "including conduct which is pre-incident

1 indication thereof."

2 I think that was an attempt to clarify,
3 but frankly, we're not exactly sure what that
4 language is intended to do, and we're not familiar
5 with the term pre-incident, and we'd ask that that
6 italicized language be removed from the condition.

7 HEARING OFFICER VALKOSKY: Okay, that's
8 clear. Anything else on compliance?

9 MR. HARRIS: I think that's it.

10 HEARING OFFICER VALKOSKY: Does staff
11 have anything else on compliance?

12 MS. HOLMES: No, we do not.

13 HEARING OFFICER VALKOSKY: Okay.
14 Comments or questions on this topic? Okay, with
15 that we'll move off compliance. By my list we
16 have air quality and land use left. Does that
17 comport with everyone's understanding?

18 MR. HARRIS: Yes.

19 HEARING OFFICER VALKOSKY: Okay.
20 Applicant did not have any -- did not have many
21 comments on air quality. Staff, have a question
22 over one of your appendix A entries, as well as
23 your general stand on air quality. Why don't you
24 summarize your positions first. I'll deal with it
25 that way.

1 MS. HOLMES: I actually wasn't preparing
2 to summarize them. I'm assuming people have read
3 them. Fundamentally staff continues to recommend
4 that the Committee require a 5 parts per million
5 ammonia slip limit because of the potential for
6 contribution of ammonia emissions to secondary
7 particulate. We have briefed the issue twice, and
8 we have discussed it in the PMPD comments. And
9 I'll leave it at that unless the Committee has
10 specific questions.

11 HEARING OFFICER VALKOSKY: Okay. Any
12 response, Mr. Harris?

13 MR. HARRIS: Yes. I'd like Mr.
14 Rubenstein to respond. We have a couple of -- I
15 guess it was one comment on the staff's comments.
16 And then there's a new proposed rulemaking from
17 EPA that we wanted to bring to the Committee's
18 attention and actually ask you to take official
19 notice of at the appropriate time.

20 But, let me turn to Mr. Rubenstein at
21 this point.

22 HEARING OFFICER VALKOSKY: That's
23 evidence. We've closed the evidentiary record.

24 MR. HARRIS: Official notice.

25 HEARING OFFICER VALKOSKY: That's

1 evidence. Never mind, Mr. Harris.

2 MR. HARRIS: -- reopen the record --

3 (Laughter.)

4 MR. HARRIS: You're having --

5 MS. HOLMES: Feisty this morning, aren't
6 you, Mr. Valkosky?

7 (Laughter.)

8 MR. HARRIS: I give up.

9 HEARING OFFICER VALKOSKY: Mr.
10 Rubenstein.

11 MR. RUBENSTEIN: Thank you, Mr.
12 Valkosky. Gary Rubenstein from Sierra Research.
13 As Mr. Harris said, we would like the Committee to
14 consider reading a recent Federal Register
15 notice --

16 (Laughter.)

17 MR. RUBENSTEIN: For the record, which
18 is now closed, the reference is 69FR5411. We have
19 -- I did not print out the entire document because
20 it's some 47 pages long, but I do have, for the
21 Committee's convenience, the title page, the
22 summary, and at the very end is a weblink to the
23 entire document.

24 This is a rulemaking dated February 4th
25 in which EPA has proposed to approve the PM10 air

1 quality plan for the San Joaquin Valley Air Basin.
2 And the relevance of that in the context of the
3 staff's comments is in this rulemaking EPA very
4 explicitly concurs with the determinations of both
5 the California Air Resources Board and the San
6 Joaquin Valley Air District that at the present
7 time there is no need to control ammonia emissions
8 as a control strategy for achieving the federal
9 PM10 air quality standards.

10 And we believe that that bolsters the
11 Committee's position, as stated in the PMPD, to
12 support the San Joaquin District's determination
13 that a 10 ppm ammonia slip level is adequate and
14 appropriate for this project.

15 I didn't have any more prepared comments
16 to make on this issue. I'd be happy to answer any
17 questions. And if not, I'll move on to the
18 relatively minor issue, the very minor issue,
19 which is the reference on page 101 of the PMPD,
20 the footnote that we've been discussing the last
21 hour.

22 HEARING OFFICER VALKOSKY: When will
23 these rules become final? When are they proposed
24 to become final?

25 MR. RUBENSTEIN: Comments on the

1 rulemaking are due back to EPA by March 5th of
2 2004. And the final date of adoption will, of
3 course, depend on the nature and extent of the
4 comments that are received.

5 HEARING OFFICER VALKOSKY: Okay. I
6 think this is helpful in response to the, I hope,
7 somewhat lighthearted exchange we had with Mr.
8 Harris. I think the appropriate thing to do is to
9 docket this. It's not yet an official action. I
10 really don't think the Committee should take
11 official notice. However, if it is docketed it is
12 part of the record and can be used to explain the
13 existing evidence. So if you will docket it I
14 think that will take care of it.

15 MR. HARRIS: We'll docket that
16 information.

17 HEARING OFFICER VALKOSKY: Okay, thank
18 you, Mr. Harris.

19 MR. HARRIS: And I -- brilliant ruling,
20 thank you.

21 HEARING OFFICER VALKOSKY: Proceed.

22 MR. RUBENSTEIN: On the minor issue,
23 which is, I think, the only remaining air quality
24 issue, the staff had a comment suggesting the
25 deletion of footnote 12 on page 101 of the PMPD.

1 As we have discussed this issue with the
2 staff and also with Mr. Swaney of the San Joaquin
3 District, I think we are all in agreement that
4 footnote 12, which references comments made by Mr.
5 Swaney at the September 29th hearing, needs to be
6 clarified. And I think that Mr. Swaney is in the
7 best position to clarify exactly what he said. So
8 I would, if he's --

9 HEARING OFFICER VALKOSKY: Great.

10 MR. RUBENSTEIN: -- ready, I suggest
11 that he come up and give you his advice as to what
12 that footnote should say.

13 HEARING OFFICER VALKOSKY: Thank you.

14 MR. SWANEY: Good morning. Yes, both
15 applicant and staff have come to me to ask me to
16 clarify my statements in the September 29th
17 hearing.

18 The footnote specifically says that the
19 Air District has a verbal preliminary approval of
20 its attainment plan from USEPA. Now verbal
21 preliminary approval is language that I used
22 during my original testimony, but it was not
23 intended to say that we had verbal preliminary
24 approval of the attainment plan.

25 Very quickly, just to clarify this, what

1 the issue that has been dealt with is the
2 inclusion of what are termed pre-baseline emission
3 reduction credits within an attainment plan. What
4 the pre-baseline date will be depends on which
5 attainment plan you're talking about, whether it
6 be ozone or particulate matter.

7 The issue that we've been having with
8 EPA is to properly account for these pre-baseline
9 ERCs in our attainment plans so that they then can
10 be used for sources under new source review.

11 The intent of my testimony was to say
12 that in our discussions with EPA over how to
13 properly account for these pre-baseline ERCs that
14 we had some verbal assurances from EPA that
15 basically we were on the right track. That was
16 the extent of my testimony. It was not to say
17 that we had verbal approval of the entire
18 attainment plan.

19 HEARING OFFICER VALKOSKY: Okay, so I
20 appreciate the clarification. Staff suggests that
21 that footnote be deleted. Does the applicant have
22 any objection to that?

23 MR. HARRIS: I think with the
24 clarification on the record deleting it would be
25 fine.

1 HEARING OFFICER VALKOSKY: Thank you
2 very much for the clarification; appreciate it.

3 So, anything further on air quality?

4 MS. HOLMES: No.

5 HEARING OFFICER VALKOSKY: Do you have
6 any reaction to Mr. Rubenstein's presentation?

7 MS. HOLMES: Only to say that I would
8 encourage the Committee to read the relevant
9 portions of the EPA notice for yourselves. The
10 discussion about ammonia controls is one that
11 staff would characterize less strongly, perhaps,
12 than Mr. Rubenstein did.

13 HEARING OFFICER VALKOSKY: Okay,
14 characterize less strongly, but do you dispute it
15 substantively?

16 MS. HOLMES: I don't dispute that that's
17 the proposed rule.

18 HEARING OFFICER VALKOSKY: No, that's
19 fine. That's what I mean, that's what --

20 MS. HOLMES: And we have no objection to
21 docketing it or using it for the purposes for
22 which the Committee has indicated as appropriate.

23 HEARING OFFICER VALKOSKY: Okay, thank
24 you. Anything further on air quality?

25 Okay, the final topic, land use. Staff?

1 MS. HOLMES: Again, I don't want to re-
2 argue a point that we've already briefed twice and
3 discussed in our PMPD comments. But I will simply
4 summarize by saying that we would encourage the
5 Committee to revisit this issue and reevaluate its
6 analysis under the principles of CEQA.

7 We believe that the proper application
8 of the CEQA principles would result in a
9 conclusion that the conversion of the prime
10 agricultural land is a significant impact and can
11 be mitigated.

12 HEARING OFFICER VALKOSKY: Okay. Mr.
13 Harris?

14 MR. HARRIS: Thank you. I guess in
15 response, the PMPD's made the fundamental finding
16 and it's not disputed by staff that ultimately
17 we're left in a situation where the city's
18 annexation and rezoning anticipated, analyzed and
19 authorized the change in use from agricultural to
20 industrial. I think that's the important point.

21 One other just note. There's a series
22 of -- a string site on page 5 of the staff's brief
23 that includes several cases, the EPIC v. ElDorado,
24 Christian Ministry v. Superior Court, Carmel by
25 the Sea v. Board of Supervisors. Without going

1 into detail on that I think suffice it to say that
2 we believe those cases support the position in the
3 PMPD, and support the applicant's position.

4 It's a string site without specific
5 references to specific language, so we don't
6 believe those cases at all stand for the
7 proposition that staff does. But that's obviously
8 a legal argument and a judgment that can be made.

9 I just wanted to flag that. We disagree
10 with those characterizations of those cases.

11 HEARING OFFICER VALKOSKY: Okay, Mr.
12 Harris, if you can, as I recall in the City's
13 rezoning, one of the resolutions the City
14 specifically found that it had posed feasible
15 mitigation but that there was still a residual
16 significant effect, and therefore it adopted the
17 overriding considerations. Is that a correct
18 recollection?

19 MR. HARRIS: I think that's a fair
20 summary, yes.

21 HEARING OFFICER VALKOSKY: Okay, do you
22 know what that mitigation was that they imposed?

23 MR. WHEATLAND: This is Gregg Wheatland.
24 To my recollection they didn't impose specific
25 mitigation. The general plan amendment that they

1 were considering initially and which was reviewed
2 by their subsequent environmental documentation
3 involved a general plan amendment that involved
4 the rezoning of several thousand acres. And so
5 there wasn't any specific mitigation with respect
6 to what they adopted in the general plan
7 amendment.

8 I believe they characterized the
9 mitigation that they adopted as the fact that they
10 were setting a firm urban limit line and
11 restricting development beyond that line. And so,
12 in a sense, they were treating as an offset. But
13 there wasn't a specific mitigation measure that
14 was adopted.

15 HEARING OFFICER VALKOSKY: Okay, thank
16 you, Mr. Wheatland, appreciate that.

17 PRESIDING MEMBER BOYD: Let me -- so not
18 only none for this 18 acres, but none for the land
19 that they moved over under this action to a new
20 zoning? Just the urban limit line concept?

21 MR. WHEATLAND: To my recollection
22 that's right, is what they were trying to do is to
23 arrange the growth of their city over the long
24 term so that there would be certain areas that
25 would be set aside and specifically identified for

1 industrial development. And then there would be
2 certain areas that would be outside the limit that
3 they set that would be reserved for long-term
4 agricultural preservation.

5 HEARING OFFICER VALKOSKY: Okay, does
6 staff have anything else on land use? Is there
7 anything else on this topic from anyone here
8 present?

9 MR. HARRIS: Nothing from us.

10 HEARING OFFICER VALKOSKY: Anything else
11 any of the parties want to bring before the
12 Committee?

13 MR. HARRIS: No, Mr. Valkosky. As Mr.
14 Baysinger notes, just anxious to get started, so.

15 HEARING OFFICER VALKOSKY: Okay.
16 Anything staff wishes to bring before the
17 Committee?

18 MS. HOLMES: Nothing further.

19 HEARING OFFICER VALKOSKY: Okay. Where
20 we're at is hopefully the Committee will tomorrow
21 issue an errata in anticipation of the business
22 meeting on the 18th.

23 We will also anticipate staff and
24 applicant submitting some agreed-upon language
25 concerning the location of the construction

1 security plan as it is reflected in condition Com-
2 8.

3 MS. HOLMES: Mr. Valkosky.

4 HEARING OFFICER VALKOSKY: Yes.

5 MS. HOLMES: I think we have a
6 preference while Mr. Baysinger is here in town to
7 try to work that language out now so that you
8 could incorporate that in your errata if you'd
9 like. Or if you'd rather have it submitted
10 separately, that's fine, also.

11 HEARING OFFICER VALKOSKY: No. If I
12 could incorporate it into the errata I certainly
13 would. Does --

14 MR. HARRIS: Could we have five minutes?

15 HEARING OFFICER VALKOSKY: Does that
16 mean -- yeah, does that mean you need another five
17 minutes or so?

18 MR. HARRIS: Yeah, I think we can get
19 this in five minutes.

20 HEARING OFFICER VALKOSKY: Okay. If we
21 could recess till 11:20.

22 (Brief recess.)

23 HEARING OFFICER VALKOSKY: While off the
24 record the parties, I'm informed, successfully
25 achieved compromise language on the Com-8

1 condition. Mr. Harris.

2 MR. HARRIS: Yes, Mr. Valkosky. Working
3 out the language that the Committee provided today
4 on the under-construction plans, the second
5 paragraph. In the first sentence we would change
6 the wording to read: "Prior to completion of" and
7 then we would strike "construction" and insert
8 "site mobilization." And then the paragraph would
9 continue on. "The construction security plan
10 shall be maintained at the office of the Secretary
11 of the Turlock Irrigation District Board of
12 Directors (Secretary's Office)."

13 And then we would strike the language
14 brought by the Committee today, the last sentence
15 that begins: "After completion of construction";
16 we would strike that sentence and replace it with
17 a sentence that reads: "After the completion of
18 site mobilization the construction security plan
19 will be relocated to the construction site and
20 kept in a secure location."

21 And I believe that's the way the
22 language would read.

23 HEARING OFFICER VALKOSKY: Okay. And
24 the second paragraph would remain as it is?
25 Dealing with the operations security plan?

1 MR. HARRIS: Mr. Baysinger, proving the
2 client is always right, has made a good point.
3 The language that the Committee proposed, the
4 "after completion of construction the document
5 shall be maintained onsite," I guess we ought to
6 keep --

7 MS. HOLMES: That needs to stay. Right,
8 I was --

9 MR. HARRIS: -- that language in. I
10 suggested that it be stricken, but it actually
11 stays. And so --

12 HEARING OFFICER VALKOSKY: Okay, so
13 we're adding a sentence before that?

14 MS. HOLMES: Right.

15 MR. HARRIS: We're adding a sentence
16 between the two.

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. HARRIS: It was that easy and I
19 still managed to goof it up.

20 HEARING OFFICER VALKOSKY: Ms. Holmes,
21 is that acceptable to staff?

22 MS. HOLMES: That is acceptable with
23 respect to the issue of the location of the
24 construction security plan. Staff still continues
25 to express its preference that the operations

1 security plan be submitted to the staff at the
2 Energy Commission.

3 HEARING OFFICER VALKOSKY: Okay, and
4 just to refresh me, what was -- Mr. Harris, what
5 was the applicant's response to staff's
6 preference?

7 MR. HARRIS: We disagree.

8 HEARING OFFICER VALKOSKY: Okay. Just
9 want to be clear. Thank you.

10 All right, is there anything else the
11 parties wish to bring before the Committee?

12 MR. HARRIS: We just would like to thank
13 the staff again, Mr. Valkosky, Mr. Eller, Ms.
14 Holmes, in particular for their approach to
15 resolving these issues. It's been actually a
16 pleasure to work with them, and that's why we're
17 having a lovefest here.

18 But, anyway, thank you for your help.

19 (Laughter.)

20 HEARING OFFICER VALKOSKY: I think, from
21 the Committee's perspective, all in all the
22 parties did an exemplary job in resolving most of
23 the issues. And I think we have a product that
24 everybody can live with at the end.

25 Okay, with that, unless there are any

1 other comments? Seeing none, we're adjourned.

2 (Whereupon, at 11:21 a.m. the hearing
3 was adjourned.)

4 --o0o--

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 13th day of February, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345